

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Provision of Directory Listing Information
Under the Communications Act of 1934,
As Amended

CC Docket No. 99-273

The Use of NII Codes and Other Abbreviated
Dialing Arrangements

CC Docket No. 92-105

Administration of the North American
Numbering Plan

CC Docket No. 92-237

REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

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Summary

The DA market data demonstrates four important facts. First, the ILECs dominate the local wireline DA market now and are projected to continue this domination into the future. Second, DA service growth is driven by wireless use, but only the ILECs and their affiliates control both wireline and wireless markets. Third, the ILECs market their wireline and wireless services together. Fourth, the ILECs, themselves, provide the wireless DA service to their wireless carrier affiliates so as to benefit and gain wireless market share and make up any perceived customer losses in the wireline DA market.

No independent DA toll provider such as Metro One has direct access to the wireless growth segment of the DA market, because wireless carriers refuse to provide their subscribers with the ability to access the DA telephone toll provider of their choice. held by the wireless carriers. As a result, parity in 1010 dialing access for wireline and wireless telephone subscribers is required, if this anticompetitive situation is to be ameliorated and the Commission is to fulfill its mission to promote increased competition in telecommunications markets that are already open to competition. Likewise, the Commission should order that all telephone service subscribers be given access to the DA telephone toll provider of their choice via the use of 555 numbers on both the wireline and wireless networks of incumbent carriers.

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Metro One Telecommunications, Inc., by its attorney and pursuant to DA02-263, CC Docket No. 99-273, released February 5, 2002, hereby submits its Reply Comments in this proceeding.

1. Introduction

The comments filed in this proceeding show a consensus on a number of important matters, requiring the Commission to take action in this proceeding to stimulate competition in all directory assistance ("DA") markets by ordering all wireline and wireless carriers to make 1010 dialing available to their customers to access competitive DA telephone toll providers.

First, the comments confirm the Frost & Sullivan studies that the directory assistance ("DA") market is at least a \$4 billion dollar market, exhibiting significant growth in wireless and enhanced DA service provision.¹ Second, the ILECs, which hold

¹ As stated in Metro One's Opening Comments, Frost & Sullivan found over 5.4 billion wireline and wireless calls sent to DA providers in 2000 and forecasts an increase of 1 billion more calls to 6.4 billion by 2007. In addition, Frost & Sullivan found that the combined wireline/wireless DA market generated \$4 billion in revenue in 2000 with (i) 11-14% call volume growth in the wireless market projected through 2007, (ii) national DA revenues increasing between 1.2 and 7.9% through 2007 and (iii) \$4.1 billion in enhanced directory revenues projected by 2007. Metro One Opening Comments at 2, 10, 15-16; Frost

an 80% market share for local wireline DA, are expected to continue that dominance and extend it to the national DA market in light of their monopoly ability to use 411 for national directory assistance.²

Third, the ILECs are not, as they claim, losing calls and revenue in the overall DA market share. Instead, by and large the ILEC wireless carrier affiliates, for whom the ILEC wireline directory providers actually provide the DA service, are picking up any ‘lost’ call volume and revenue of the ILECs.³ Meanwhile, independent DA toll providers such as Metro One are shut out of the wireless DA Market because wireless carriers refuse to program 1010 dialing to allow their customers to choose an alternate DA telephone toll provider.⁴

Given these record facts, the public interest demands that the Commission take some immediate minimal steps to provide parity of customer choice of DA telephone toll provider, whether the telephone subscriber is using a wireline or wireless telephone. Fortunately, as the parties’ comments confirm, the Commission has the legal authority to take action to promote DA competition through its jurisdiction over telephone toll and telephone exchange providers, under section 251 of the Act and over wireless carriers under Section 332(c)(8).

& Sullivan Wireline Report at 73.

² Metro One Comments at 13, citing the 2001 Frost & Sullivan Wireline Report.

³ Metro One Comments at 4-5 & 15. As Frost & Sullivan state, “. . . many of the wireline directory assistance providers also provide wireless directory assistance as a part of their wireless segment offering.” 2001 Frost & Sullivan Wireline Report at 52. Qwest also confirms this fact in its Comments. Qwest Comments at 7, fn. 21.

⁴ See Metro One Comments at 4 wherein Metro One noted that it requested 1010 access dialing from Verizon and Qwest, which request was denied. Thus, the only point of entry into the wireless market for an independent DA telephone toll provider is if a wireless carrier will deputize the independent DA telephone toll provider as its agent.

Thus, as discussed below, the Commission can and should require both wireline and wireless carriers to afford their customers the choice of DA telephone toll providers through 1010 access and 555 national numbers. Meanwhile, the Commission can carefully consider 411XY presubscription operational issues and policies along with the ultimate elimination of the 411 dialing monopoly now held by the ILECs and the wireless carriers. In taking these steps, the Commission should also indicate that it will not tolerate carriers that do not comply with this nurturing of the competitive process and that the Commission will quickly and effectively enforce its orders in the face of any such obdurance.

2. The Parties Agree That The Commission Has Plenary Authority To Order Alternative Access Dialing (such as 1010 and 555) For DA Toll Providers and Telephone Exchange Providers. (NPRM Section III. A.)

All of the parties' comments indicate that the Commission has plenary dialing authority, under Sections 251, 201 and 203 of the Communications Act of 1934, as amended ("Act"), to order access to DA telephone toll and exchange providers for telephone service subscribers.⁵ As SBC states, "The Act unambiguously requires a LEC to provide the benefits of Section 251(b)(3) **only** to competing providers of "telephone exchange service and telephone toll service."⁶ Likewise, Bell South states,

Section 251(b)(3) of the 1996 Act imposes dual obligations on LECs:
(1) a duty to provide dialing parity; and (2) a duty to provide
nondiscriminatory access. Both of these obligations extend only to

⁵ What the ILECs disagree about is whether such authority also covers provision of DA services by non-telephone toll or telephone exchange providers and whether that plenary authority extends to presubscription. See e.g. SBC Comments at 5-12; Verizon comments at 4, Bell South Comments at 5.

⁶ SBC comments at 13, (emphasis in original); footnote quotation to Section 251(b)(3) omitted.

providers of telephone exchange serve and telephone toll service.⁷

Similarly, as Metro One pointed out in its Comments, the Commission has the authority under Section 332(c)(8) of the Act to order dialing parity in wireless telephony, if the Commission finds that wireless "subscribers to such [telephone toll] services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest" Ibid. As Metro One demonstrated in its Comments, and as confirmed by ILEC comments, wireless subscribers do not get a choice of DA toll provider, nor do they have any form of alternate access available to them for casual calling in the form of 1010 dialing. Metro One Comments at 3-5.⁸ This lack of choice implicates a Section 332(c)(8) public interest finding to assure wireless carrier subscribers the DA toll provider of their choice. In fact, Section 332(c)(8) contemplates alternate access such as 1010 dialing for customer access because it contemplates remedying this lack of choice "through the use of carrier identification code assigned to such provider or **other mechanism.**" (emphasis supplied) Ibid.

3. The DA Market Data Demonstrates that Parity in Access to DA Toll Providers for Both Wireline and Wireless Customers Is Required Through The Use of 1010 Dialing That Is Available To Subscribers Whether They Use Their Wireline or Wireless Telephone. (NPRM Section III.B-D)

The DA market data demonstrates four important facts. First, the ILECs dominate the local wireline DA market now and are projected to continue this domination into the future. Second, DA service growth is driven by wireless use, but only the ILECs and their affiliates control both wireline and wireless markets. Third, the ILECs,

⁷ BellSouth comments at 5.

⁸ Qwest confirms this circumstance in its Comments, "Wireless carriers' customers interact with a directory assistance provider chosen by the wireless carrier" Qwest comments at 7.

themselves, provide the wireless DA service to their wireless carrier affiliates so as to benefit and gain wireless market share.⁹ Fourth, the ILECs market their wireline and wireless services together. As recently as the week of April 14, 2002, Qwest was running television broadcast advertisements in Portland, Oregon soliciting telephone subscribers to both its wireline and wireless service using one telephone number, and receiving one bill.¹⁰ Thus, any “diminishment” in ILEC wireline DA revenue is a cipher because the the ILECs and their wireless affiliates are, in fact, experiencing an increase in call volume and revenue derived from the incestuous stranglehold that the ILECS and their wireless affiliates have on both sides of the DA market.¹¹

No independent DA telephone toll provider such as Metro One has direct access to the wireless growth segment of the DA market, because no form of alternative access is provided to wireless carrier customers held by the wireless carriers.¹² As a result, parity in 1010 DA access dialing for wireline and wireless telephone subscribers is required, if this anticompetitive situation is to be ameliorated and the Commission is to fulfill its

⁹ Frost & Sullivan Wireline Report at 52. The National Economic Research Associates report, commissioned by the ILECs, (at 17-18) relies on the 2000 Frost & Sullivan reports for its findings about the expansion of the wireless market.

¹⁰ See also Attachment 3 to Metro One's Comments, Qwest literature offering both home wireline telephone and wireless service together to subscribers with a single source of billing.

¹¹ Frost & Sullivan show positive revenue growth of national DA for the ILECs ranging from 5.9% in 2002 to 1.2% in 2007. This offsets projected growth of 2.0% in 2001 to (4.3%) in 2007 for local DA. 2001 Frost & Sullivan Wireline Report at 73 and 59. Meanwhile, the total wireless directory assistance services market –which, but for AT&T Wireless, by and large redounds to the benefit of the ILEC wireless carrier affiliates-- has projected revenue growth of 13.7% in 2002 with a range of growth projected from 2003-2007 of 7.5% to 13.6%. Frost & Sullivan 2001 Wireless Report at 14.

¹² Qwest falsely claims in its Comments (at 7) that some form of alternate access does exist for wireless subscribers. Rather, as pointed out in Metro One's Comments, Metro One requested such alternative access via 1010 dialing from Qwest and Verizon for wireless calls and both carriers denied that request. See Metro One Comments at 4.

mission to promote increased competition in telecommunications markets that are already open to competition.¹³ Indeed, ILEC Cincinnati Bell and the ILECs that are members of National Telecommunications Cooperative Association ("NTCA") recognize this fact and support such parity when Commission action is taken in this proceeding. Cincinnati Bell Comments at 14; NTCA Comments at 4.

4. 1010 Dialing Is The Easiest & Least Costly Measure That The Commission Can Take Immediately To Promote Competition Across Wireline and Wireless DA Markets. (NPRM Section III.D. 1-5)

Requiring 1010 dialing access for alternative DA toll providers across all DA markets is the easiest and quickest step that the Commission can take to promote subscriber choice of DA provider. 1010 dialing can be implemented merely by requiring that wireless carriers program a 1010 switch translation that is no different than current switch translations done by wireline carriers.¹⁴ In addition, the Commission's order should confirm that wireline carriers must also provide such access because BellSouth claims that some classes of wireline service do not allow this type of access. BellSouth Comments at 31. In both cases, the Commission must monitor compliance with this requirement so that carriers are not allowed to thwart competition with recalcitrant refusals to implement 1010 translations for DA toll providers or by imposing excessive non-cost based charges for such translations.

5. National 555 Dialing Should Also Be Ordered Across DA Markets. (NPRM Section III. D. 1-5)

¹³ Provision of Directory listing Information Under the Telecommunications Act of 1934, as amended, FCC 01-027, released January 23, 2001 ("2001 DLI Order") at para.10.

¹⁴ This translation enables the carrier's switch to recognize and route the call to the DA telephone toll provider's trunk group. The cost to program such a translation is customarily in the low hundreds of dollars per switch. The basic switch functionality to recognize translations is a carrier cost and concern.

In their Comments, Premiere Network Services, Inc. and InfoNXX, Inc. have documented how national 555 dialing has been thwarted by ILEC behavior. Metro One has had the same experience with its two 555 numbers; no ILEC will implement them. As InfoNXX points out, there are two ways to implement 555, AIN-based 555 and 555/800 number translations. InfoNXX Comments at 13. The former would be more efficient and cost-neutral while the latter, is technically simple and easy to implement, but would saddle independent DA toll providers with higher costs. Ibid.¹⁵

Given the necessity to remedy competitive inequity quickly, the 800 number translation version of 555 should be ordered across DA markets, both wireline and wireless.¹⁶ As it stands today, both the ILECs and the wireless carriers carry 800 traffic for themselves and therefore can not claim technical incapability in this regard.¹⁷ Moreover, because both ILECs and wireless carriers carry their own 555 and 800 traffic, it is unreasonably discriminatory under Sections 201 and 202 of the Act, if the same form of dialing is not provided their competitors. In the wireline environment, it would also be a violation of Section 251(b) of the Act. On the wireless side, such discrimination would continue the abridgement of customer choice of DA toll provider, warranting the 555/800 number-based translation as a remedy for the lack of choice pursuant to Section 332(c)(8) of the Act. As in the case of implementation of 1010 dialing, the Commission must

¹⁵ Metro One's Comments note the ease with which 555/800 number based translations could be implemented. Id. at 18, 20; see also Attachment 5 thereto.

¹⁶ It should be noted that the ILECs only questioned the cost of and timing of AIN-based 555 number implementation. See e.g. SBC Comments at 45-48; Verizon Comments at 29-30.

¹⁷ The 555 Technical Service Interconnection Arrangements have been developed by the Industry Compatibility Forum in 1999 so that all that the Commission must do is order the ILECs and the wireless carriers to implement any 555 number requests in conformance with industry guidelines. Verizon acknowledges that the Commission has the authority to designate the 555 numbers for national use in accordance with existing guidelines. Verizon Comments at 29.

remain vigilant to make sure that carriers do not impede competition by obstructing the operational aspects of utilizing 555 numbers for access to DA toll providers of a subscriber's choice or imposing excessive charges that are not cost-based.

6. States Filing Comments Favor Competitive DA Alternatives. (NPRM Section III.D.6)

Five states filed comments in this proceeding, California, New Jersey, Nebraska, Oklahoma and Pennsylvania. All of the state comments favored more competition in the DA marketplace.¹⁸ None of the states wanted their jurisdiction vitiated by the proceeding, but the states favored 411 competition (Nebraska), investigation of alternative dialing patterns to promote DA competition (California), minimum federal regulatory guidelines (Oklahoma), and acknowledgement of federal authority in this area (New Jersey).

Metro One's proposals concerning 1010 dialing and 555 dialing can be implemented without any diminution of current state regulatory roles because they do not have a presubscription component and constitute interstate casual calling patterns. Thus, adopting these limited proposals will avoid any disputes over state authority over traditional 411 dialing.

7. Excessive Billing Charges Will Thwart Competition Unless The Commission Orders Non-Discriminatory, Reasonable Cost-Based Billing. (NPRM Section III C.3)

Competition in DA telephone toll provision can be halted if the Commission does not assure that ILECs and cellular carriers reasonably charge DA telephone toll providers for billing for 1010 and 555 calling. Currently, such billing charges vary widely, anywhere between \$.56 to \$.98 per billing line for the first line of such billing for DA services provision by the ILECs. Obviously this is a wide disparity. The

¹⁸ Pennsylvania's comments were primarily directed at presubscription and proposed a test

Commission should address this matter by assuring that DA telephone toll providers are not being charged for billing any differently than an ILEC or cellular carrier bills or imputes such billing for its own DA provisioning. This cost-based billing is particularly important in light of the fact that ILEC carriers, such as Qwest, market their wireless and wireline service together providing the subscriber one bill as Attachment 3 to Metro One's Comments demonstrate. Thus, in view of these economies of scope and scale, the Commission should assure that any such charges to third party independent DA toll providers be reasonable, cost-based and nondiscriminatory.

8. Promoting Competition In The DA Toll Market Will Foster Price Competition, Innovation & Better Quality Service. (NPRM Section III)

The Commission has often reiterated that a stated goal of the Act is to remove statutory, regulatory, economic and operational impediments to competition.¹⁹ The comments filed in this proceeding have noted that the latter three impediments exist in the DA market and that the statute [the Act] actually provides a remedy for the current inequities in the marketplace.

The ILEC focus in this proceeding on how much and how quickly or slowly the DA market is growing, or whether the growth in wireless vastly exceeds wireline, is really a sideshow when one considers that the entire market for provision of DA services now and in the future will continue to include billions of calls and billions of dollars.²⁰ The real issue is whether this Commission is going to foster some form of competition in

for when presubscription should be implemented.

¹⁹ 2001 DLI Order at para. 3.

²⁰ Metro One Comments at 2, citing Frost & Sullivan Wireline and Wireless Reports.

this large DA marketplace **now**, which today is dominated by the ILECs and their wireless affiliates and will continue this domination absent Commission action.

Telegate has done the Commission a service in its Comments by pointing out the benefits that competition has brought to Europe in the form of better quality of service, innovative offerings and price competition. In contrast, the ILECs in this proceeding go so far as to state that there is nothing to suggest that incumbent carriers today "use DA features or price to differentiate their local exchange service packages " Verizon Comments at 16. This latter statement shows that the ILECs do not want competition nor do they intend to bring the benefits of competition, --innovation, better quality service and price competition-- to telephone subscribers .

The lack of price competition in the DA market is in stark contrast to the price competition in the interLATA toll market once the Commission eliminated regulatory barriers to entry and choice of carrier was allowed. In January, 2002, Metro One surveyed ILEC pricing and found that Qwest, charges as much as \$1.25 for directory search requests in Colorado, Iowa, Nebraska, South Dakota, Washington and Wyoming and SBC charges at least \$1.10 in Texas for its DA service.

A similar lack of price competition exists in the wireless market. In its January, 2002 survey, Metro One found wireless carriers that have more than doubled the price from as little as \$.60 three years ago to \$1.25 per call.²¹ Thus, both the wireline and the wireless market suffer from a lack of DA price competition that independent DA telephone toll providers could supply if the Commission eliminates the regulatory barrier to entry for 1010 and 555 dialing.

9. Conclusion

Verizon's test for Commission action in this proceeding is whether the incremental benefits of competition outweigh the incremental costs. Verizon Comments

²¹ Cingular Wireless, for example, charges \$1.29/call.

at 1. Obviously, implementation of 1010 dialing and 555 dialing in the wireline and wireless markets to promote competition far outweighs the de minimis costs of these steps, particularly in light of the alleged costs of 411XY presubscription. Thus, Metro One urges the Commission to immediately order that all carriers --wireline and wireless-- provide 1010 dialing for telephone subscriber access to the independent DA toll provider of their choice. Thereafter, the Commission should order national 555 DA access for telephone subscribers to use in accessing the DA toll provider of choice in both wireline and wireless markets. Finally, the Commission must maintain oversight of its orders to assure prompt and complete compliance by wireline and wireless carriers.

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